

May 25, 2006

Mr. Scott called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Mulhall (7:05 p.m. Absent for Roll Call), Mr. Martin (7:10 p.m. Absent for Roll Call), Mr. Lukasik, Mr. Bischoff, Mr. Rosol, Mr. Roth, Mr. Grossi, Mr. Scott

Members Absent: Mr. Rossi, Mr. Brandt

Others Present: Atty. William Sutphen, Robert Bogart, Carl Hintz, Atty. Michael Vitiello, Russell, Cindy and Chelsea Best, Lisa Nargi, David Mills

Issue of Completeness: Pilot Travel Centers: Block 11, Lot 24.03, 68 Route 173 W.

Atty. Michael Vitiello, representing applicant, said his client is seeking a determination of completeness. The application has been transferred to the Board of Adjustment because the zoning of the property has been changed. A Stipulation of Settlement sets forth provisions of the Settlement. Mr. Scott wanted clarification of what Pilot is seeking. He understood a letter had been sent to Atty. Sutphen stating the variance relief requested. Mr. Scott addressed the Waiver/Variance requests that were submitted with the original application. They were for Area and dimensional requirements, maximum impervious surface (50%), (*Replacement of existing conditions); Parking not permitted within ten feet of side or rear yard lot lines*; No parking space located less than 20 feet from a public street right-of-way*; Parking lots and roadways light poles not to exceed 16 feet in height. (The existing and proposed lighting exceeds the required height due to the efficiency of the area to be lit); Sign shall not exceed 40 sq. ft. (combined surface area) (**Existing and proposed signage exceeds the required surface area due to location and visibility from major highway); **Overall height not to exceed 14 ft.; Natural features (Township NRI), Items 21, 23, 24, 26, 27, 28, 32, 33, 34, 35, 36 and 37 (Checklist) The tract area consists of an operational service station and restaurant. The proposed improvements will remain within the general area (footprint) of the already disturbed area, therefore, no additional disturbance to existing features is expected. He asked Atty. Vitiello to confirm those requests. Mr. Vitiello said he would do his best.

Atty. Sutphen said he had spoken with Atty. Paul Schneider about the above-listed Waiver/Variance requests. Mr. Schneider had indicated that the variances being sought were for those requested at the time the application was submitted. Mr. Sutphen said he received a letter dated May 10, 2006 from Atty. Schneider that stated the application requires a "D" Variance since the property is now located in the Professional Office (PO) District. The Township Committee adopted an Ordinance on March 1, 2006 that changed the zoning. The proposed use is not permitted in the PO District. Atty. Schneider said variance relief is warranted because there are special reasons for the variances and can be granted without substantial detriment to the public good and would

not substantially impair the intended purpose of the zone plan and the Zoning Ordinance. Mr. Schneider said Pilot can continue the present use as a matter of right. Pilot plans to continue the use and seeks approval to improve the site. Expert testimony will be provided. Mr. Scott asked Atty. Vitiello if that was his understanding of the relief being sought. Mr. Vitiello said it was. He said the Public Notice would include a standard term indicating that if the Board requests a modification or if it is determined additional relief was required, Pilot would be asking for that relief without further notice. Mr. Scott said that was one of the things the Board was trying to avoid. Mr. Scott also said the application is for Preliminary and Final approval. It is not the Board's policy to act on both. Atty. Vitiello feels the completeness determination should relate to the full application. Mr. Scott said that any waivers granted would be for completeness purposes only. Atty. Vitiello said he believes the Stipulation of Settlement as it relates to the waiver for aquifer testing goes beyond completeness. Mr. Bogart said he believes that is alright as long as the matter could be discussed at the Hearing. Mr. Scott said he understands the Witnesses to be called are Robert Stout and Joseph Staigar. Atty. Vitiello said he believes the Witness List would be supplemented. The list does not include a planner.

Mr. Scott asked for comments from Board members. Mr. Grossi said he would want the names of additional witnesses. Mr. Scott said the Board has a policy about witnesses and their reports and the timing of the submission of reports. The Hearing would be scheduled and applicant would proceed at their risk. Mr. Scott did not understand why applicant did not have a planner. He said the Board requires that information to be presented at a Hearing must be submitted twenty-one prior to that Hearing. Atty. Vitiello said he was uncertain whether applicant was going to submit a Planning report or whether planning information was to be in the way of testimony. Mr. Scott told Mr. Vitiello the Board would frown upon the planner appearing at the Hearing without having first submitted a report.

Mr. Scott said if the Board wanted to take action the motion would be to deem the Preliminary Site Plan and Variance application complete, granting waivers for completeness only, subject to the Stipulation of Settlement and conditions created therein. Atty. Vitiello asked if that would include the application for Final. Mr. Scott thought there should be two separate votes. Atty. Sutphen reviewed the Stipulation of Settlement and Dismissal and it doesn't say Preliminary or Final. Atty. Vitiello said the Stipulation refers to the application as submitted to the Planning Board.

Mr. Grossi made a motion to deem the Preliminary Site Plan and Variance application complete, granting waivers for completeness only and incorporating the conditions of the Stipulation of Settlement relative to the aquifer test. Mr. Rosol seconded the motion.

Vote: Ayes: Mr. Grossi, Mr. Rosol, Mr. Martin, Mr. Lukasik, Mr. Bischoff, Mr. Roth,
Mr. Scott

Abstain: Mr. Mulhall

Mr. Grossi made a motion to deny completeness for the Final Site Plan application. Mr. Rosol seconded the motion.

Vote: Ayes: Mr. Grossi, Mr. Rosol, Mr. Martin, Mr. Lukasik, Mr. Bischoff, Mr. Roth,
Mr. Scott

Abstain: Mr. Mulhall

Barn: Best: Block 27, Lot 8, 10 Finn Road: Cindy Best gave an overview of the request to construct a 30' x 36' four-stall barn in the agricultural easement. Access would be from Cooks Cross Road. Ms. Best provided the required information as per Board policy (A narrative, rendering of the building and its proposed location on the site, as well as letters to contiguous property owners). The narrative was marked Exhibit A-1, colored picture of proposed barn Exhibit A-2, drawing of barn Exhibit A-3 and Aerial View Exhibit A-4. Mr. Hintz wanted confirmation that the barn would meet setback requirements. Mr. Best said it would.

A motion to approve the barn application was made by Mr. Grossi and seconded by Mr. Bischoff.

Vote: Ayes: Mr. Grossi, Mr. Bischoff, Mr. Mulhall, Mr. Martin, Mr. Lukasik,
Mr. Rosol, Mr. Roth, Mr. Scott

Barro: Block 5.01, Lot 17, 40 Grandin Court: Memorialization of Resolution #2006-001: A motion to memorialize the Resolution was made by Mr. Grossi and seconded by Mr. Rosol.

Vote: Ayes: Mr. Grossi, Mr. Rosol, Mr. Lukasik, Mr. Scott
Naye: Mr. Bischoff

Davis: Block 28, Lot 9, 202 Main Street (Jutland): Memorialization of Resolution #2006-004: A motion to memorialize the Resolution was made by Mr. Rosol and seconded by Mr. Lukasik.

Vote: Ayes: Mr. Rosol, Mr. Lukasik, Mr. Grossi, Mr. Scott
Naye: Mr. Bischoff

Case: Block 17, Lot 2, 12 Lakeview Lane: Memorialization of Resolution

A motion to memorialize the Resolution was made by Mr. Rosol and seconded by Mr. Grossi.

Vote: Ayes: Mr. Rosol, Mr. Lukasik, Mr. Grossi, Mr. Scott
Naye: Mr. Bischoff

Mr. Bischoff voted naye because he wanted the names of all Board members listed in the Resolutions, even if they were absent when action was taken. Their votes on the action approving the application and the Resolution would be included. Mr. Scott wanted the Resolutions memorialized in order that he could sign them and applicants could move forward. Mr. Scott said there is a record of the votes. Forthcoming Resolutions will include the information requested by Mr. Bischoff.

Public Hearing: Stormwater Management Plan Revision/Master Plan Amendment:

Mr. Scott asked for a motion to open the Hearing. Mr. Roth made the motion. Mr. Rosol seconded the motion.

Vote: All Ayes

Mr. Scott asked Mr. Bogart to summarize the Amendment. Mr. Bogart said in 2004, the NJDEP mandated Stormwater regulations for all municipalities in the State. The first requirement was to adopt an Amendment to the Master Plan to include Stormwater Management. That was done by the mandated date of April 2005. The next requirement was that the Governing Body adopt a Stormwater Management Ordinance by April 2006 and that was done. It is now required that the Board amend the previous Plan to show that the Stormwater Management Ordinance had been adopted. The Plan includes all requirements from Hunterdon County. Mr. Bischoff asked if the April 18, 2006 letter from HCPB about non-compliance of the Township's Plan was no longer true. Mr. Bogart said that was correct. Mr. Scott asked for questions from the Public. There were none.

Mr. Scott asked for a motion to close the Hearing. The motion was made by Mr. Bischoff and seconded by Mr. Rosol.

Vote: All Ayes

Mr. Scott asked for a motion to approve the Stormwater Management Plan Revision/Master Plan Amendment. The motion was made by Mr. Bischoff and seconded by Mr. Roth.

Vote: Ayes: Mr. Bischoff, Mr. Roth, Mr. Martin, Mr. Lukasik, Mr. Rosol,
Mr. Grossi, Mr. Scott

Abstain: Mr. Mulhall

Soil Erosion Amendment: The Township Committee recommended that the square footage be increased from 3,500 square feet to 5,000 square feet. Mr. Mulhall said that some members of the Committee felt the 3,500 square feet requirement would put severe constraints on property owners with small lots. Mr. Bogart emphasized the importance of the Ordinance. Mr. Bischoff asked Mr. Bogart the great need for such an Ordinance, since Hunterdon County has an Ordinance. Mr. Bogart said Committeeman Haynes noted that there has been difficulty in controlling soil erosion and lot grading in developments where Soil Conservation does not do enforcement. Mr. Bogart said that the Standards are also different. He said Soil Conservation would issue a CO for a residential building lot as long as applicant shows that the lot has been rough graded and grass seed has been planted. The Soil Erosion Ordinance is more stringent. The Township would not issue a CO or release a Bond until germination is visible over a certain percentage of the property. Mr. Bischoff questioned why the Township would want to put a homeowner through additional expense. He felt the Township could have an Ordinance without fees but would have enforceability.

Mr. Bogart said the proposed Ordinance is to protect the homeowner against the builder. Mr. Roth voiced a concern about a property owner who had to install a septic system as opposed to one who might be constructing a swimming pool, change their driveway or put an addition on their house because they can afford to. He said a property owner might not have the option with a septic system. Mr. Mulhall said the Ordinance, for the most part, would be impacting an owner who was building an addition or constructing a pool. He also said Mrs. Nargi had apprised the Committee about a barn that would have been impacted by the Ordinance. Mrs. Nargi said the County did check on that matter. Mr. Bogart said the problem has been with new lots in developments. It has not normally been with a pool, deck or septic system. He said that disturbance would usually be less than 5,000 square feet. Mr. Mulhall said Mr. Bischoff had a valid point about creating additional expense for a homeowner. He said as a Committeeman he would not be in favor of an Ordinance that impinges on a property owner who is making some changes. Mr. Mulhall does not believe the Committee would approve an Ordinance with 3,500 square footage of disturbed area. Mr. Scott said the Ordinance was prompted by persons attending Committee meetings and raising concerns about soil grading. The Ordinance would give the Township a mechanism to address complaints that the County did not address.

Mr. Scott said the Board could table the Ordinance, send it back to the Township Committee as proposed or increase the square footage to 5,000. Mr. Grossi asked if there was a consensus of the Committee. Mr. Mulhall said one Committee member is opposed to the increase. Mr. Mulhall said issues were raised about the proposed Ordinance impinging on property owners and would it be a benefit to the community. Mr. Scott said the question being asked is whether the Board wants the Township to have the ability to enforce soil erosion and control. Mr. Mulhall said he believes the Committee does not feel that 3,500 square feet is reasonable. Mr. Grossi said the Board had made a recommendation to the Committee and it was up to them to decide what they want. Mr. Mulhall said the Committee, in a memo from the Township Clerk, suggested the square footage be increased. Mr. Lukasik thought the square footage should be increased since it would coincide with Soil Conservation. Mr. Rosol said he was not concerned about whether the square footage was 3,500 or 5,000 nor was he concerned about whether the Committee does or does not want the Ordinance. Mr. Rosol thought the Board should send it back to the Committee recommending the 5,000 square feet and let them make their decision.

Mr. Bischoff made a motion to recommend to the Committee that the square footage in the Soil Erosion Ordinance be increased from 3,500 to 5,000, as per their suggestion. Mr. Rosol seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Rosol, Mr. Mulhall, Mr. Martin, Mr. Lukasik,
Mr. Roth, Mr. Grossi, Mr. Scott

Lisa Nargi commented on the Soil Erosion Ordinance. She believes that the Committee will accept the recommendation. Mr. Grossi understood that Messrs. Mulhall and Bischoff were concerned about the impact on individual homeowners. He sensed the Committee had voted in favor of the independence of the homeowner. Mrs. Nargi thought the Committee looked at the square footage. Mrs. Nargi said she brought the issue up at a Committee meeting because she felt the Township should be enforcing some erosion issues.

Correspondence: Toll Bros/Lookout Pointe: Block 11, Lot 8, Rupell Road & Bank Street (Barn): Mr. Scott said he spoke with Mr. Levitsky about finalizing the details of the Barn. Mr. Martin said he had spoken with Architect Susan Rochelle about the issue. Ms. Rochelle was not interested in the Barn, since it is a new building. Mr. Martin had also spoken with members of the Historic Preservation Committee (HPC) and they were generally satisfied with Toll's proposal. Mr. Scott said Mr. Levitsky is anticipating an affirmative vote from the Planning Board and the HPC. Mr. Bischoff said he had reviewed the original Resolution and that states the applicant/owner shall be responsible for the restoration/preservation of the Historic Homestead and conversion/preservation of the Barn. Mr. Bischoff said the Board had not heard anything about the Homestead. Mr. Martin said Architect Rochelle indicated she would be interested in seeing the Homestead. Mr. Martin said Toll wants to sell the Homestead, as is. Mr. Bischoff said selling as is would not successfully complete Toll's obligation. Mr. Scott said Mr. Levitsky had sent a letter, dated April 20, 2006, regarding the required improvements necessary to restore the Homestead. Toll requested a written confirmation on the specific requirements from the HPC. Mr. Bischoff said it appears from the Resolution that Toll needs to submit a plan for the restoration of the Homestead. Mr. Martin said he feels the HPC, with the Architect, should make a site visit and make recommendations. Mr. Scott said a letter should be sent to Toll recommending that a meeting be held with the HPC before preparing a formal plan.

A motion was made by Mr. Bischoff to advise Toll Bros. that conditions articulated in the April 4 and 28, 2006 letters would satisfy requirements for the restoration of the Barn. The motion was seconded by Mr. Rosol.

Vote: Ayes: Mr. Bischoff, Mr. Rosol, Mr. Mulhall, Mr. Martin, Mr. Lukasik, Mr. Roth, Mr. Grossi, Mr. Scott

A motion was made by Mr. Bischoff that the HPC meet informally with Toll Bros. with respect to development of a plan for the restoration of the Homestead. Mr. Roth seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Roth, Mr. Mulhall, Mr. Martin, Mr. Lukasik, Mr. Rosol, Mr. Grossi, Mr. Scott

Norris: Block 8, Lot 5.11, Olde Forge Lane: NJDEP letter state the property has Highlands Act Exemption **Davis and Gray: Block 28, Lot 9, 202 Main Street (Jutland):** Thank you letters to the Board for their help in obtaining approvals for the ECHO Unit. **P.S. Construction: Block 22, Lot 27, 22 Race Street:** HCPD letter granting Unconditional approval; Jeff Tariela Environmental Consultant letter applying to NJDEP for determination of the presence or absence of Wetlands

Approval of Minutes: Mr. Bischoff had a question about the letter that was to be sent to Mr. Levitsky (Toll Bros/Lookout Pointe). Mr. Scott said he needed information from the HPC prior to writing the letter. Mr. Bischoff made a motion to approve the minutes of the April 27, 2006 meeting. Mr. Rosol seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Rosol, Mr. Lukasik, Mr. Grossi, Mr. Scott

Abstain: Mr. Mulhall, Mr. Martin, Mr. Roth

Mr. Scott said Mr. Mulhall had a concern. The Board would then go into Executive Session. Mr. Mulhall had a question about Committee members recusing themselves during Board of Adjustment matters. Atty. Sutphen said he thought that would only be required for Use variances. Mr. Scott said the Zoning Ordinance states differently. Atty. Sutphen will research the matter.

Atty. Sutphen had requested that the Board go into Executive Session to discuss Litigation. Mr. Mulhall made the motion to go into Executive Session. Mr. Bischoff seconded the motion. (8:40 p.m.)

Vote: All Ayes

**A RESOLUTION PROVIDING FOR A MEETING NOT OPEN TO THE PUBLIC IN
ACCORDANCE WITH N.J.S.A. 10:A-4-12**

WHEREAS, the Planning Board of the Township of Union is subject to the Open Public Meetings Act, N.J.S.A. 10:A-4-6, et Seq., and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:A-4-12, provides that an Executive Session, not open to the Public, may be held for certain specified purposes when authorized by Resolution, and

WHEREAS, it is necessary for the Planning Board of the Township of Union to discuss in a session not open to the Public certain matters related to the item authorized by N.J.S.A. 10:4-1b and designated above: Matters Relating to Litigation

Now, therefore, be it resolved by the Planning Board of the Township of union, assembled in Public Session on May 25, 2006, in the Union Township Municipal Building, 140 Perryville Road, Hampton, N.J. 08827, for the discussion of matters relating to the specified items designated above.

It is anticipated the deliberations conducted in closed session may be disclosed to the Public upon determination by the Planning Board that the public interest will no longer be served by such confidentiality.

The Executive Session ended at 8:45 p.m.

A motion to return to the regular meeting was made by Mr. Rosol and seconded by Mr. Roth.

Vote: All Ayes

A motion to adjourn was made by Mr. Rosol and seconded by Mr. Roth. (8:45 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary

